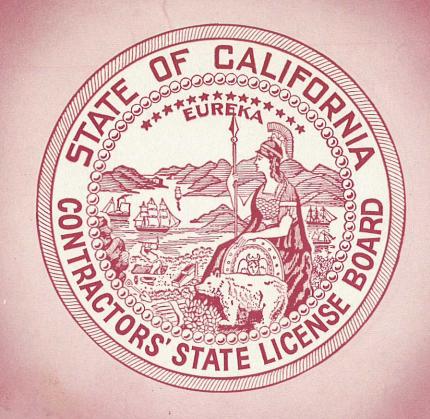
# The ORIVIA LICENSED CONTRACTOR



May

1940

Second Quarter

# Popular Demand for New Handbook Is Met

Copies of the new "Handbook for Licensed Contractors" are now available at a price of \$1.00, plus  $3\phi$  tax and may be secured from inspectors of the Registrar or from the Sacramento, Los Angeles, or San Francisco offices of the board. Mailed subscriptions and inquiries should be addressed to the Supervisor of Documents, State Capitol, Sacramento.

This Handbook has been expanded and the copy has been revised. Information contained in regard to State and Federal laws relating to construction and employment of labor is absolutely up to date. As in the past, the publication is printed by the State Printing Plant.

This book contains a great deal of information which is vitally important to every active contractor. It is the only publication in which all of this information is assembled under one cover. All digests of State and Federal laws have been checked with a leading authority on these subjects, but all of such digests and briefs have been written in layman's language. The scope of this publication is indicated by the index which follows:

Article, "Recognized Principles of Fair Trade"

By Allen Miller, Registrar of Contractors

The California Contractors' License Law

Rules of the Contractors' State License Board

Digest of Mechanics' Lien Laws

Digest of Workmen's Compensation Insurance Act

Salient Points About Compensation Insurance

State Labor Code (Selected Sections)

Construction Safety Orders of the Industrial Accident Commission

The California Unemployment Insurance Act

Field Offices of the U. S. Social Security Board

Federal Old Age Pension Requirements for Contractors

State Sales Tax Ruling 11 and Interpretation

State Housing Act

# New Procedure for Renewal Applications

Upon the renewal application, which every licensee has received within the past few days, space is provided for that licensee to state the classification within which the

majority of his operations fall.

Since the inception of the Contractors' License Law, every original applicant has been required by the specific provisions of the Law to state in the application a classification under which the applicant desired to operate as a contractor. In many instances our files do no longer accurately disclose the class of contracting business in which a licensee is principally operating.

Several factors account for this. In some cases an early licensee was classified under a number representing a certain type of work, but a revision of the classification table was later deemed advisable because of requests from the industry for such a change. Thus the original numbering code was altered. In other cases an applicant may have carelessly checked the wrong classification. In

some instances applicants checked three or four classifications, which in itself was then the proper procedure, but they failed to signify the classification which designated the principal line in which the operations would be carried on.

More cases of improper principal classification now exist, however, due to a gradual change in the licensee's business over a period of years. Some applicants, who indicated two or more lines of business at the time of application for a license, showed one of these to be the principal line of his operations. However, as time has gone on, they

have taken more and more contracts under one classification not checked as the major line and less under the one which they at first expected would be their principal type of work.

The Registrar annually publishes a directory of licensed contractors, both for the use of the personnel of his department, as well as for public officials whose duties require them to know whether or not contractors are licensed. Likewise, the Registrar has prepared and kept up to date statistical data upon the numbers of contractors operating in the various classifi-

> cations. By re-checking of classifications this year our directory and statistical records will be made more accurate and more valuable. In addition, any future steps taken by the Board in expansion of the examinations required of applicants will be aided by this verification and correction program.

> Do not be disturbed by the fear that you

can not continue to do business as you have in the past. No rules have been adopted confining your work to any particular classification. It is only necessary that at this time the records truthfully and accurately show the "principal" class within which your operations fall.

CONTENTS Page Governor Olson Appoints New Board Members Suspensions and Revocations\_\_\_\_\_ Unlicensed Contractors Jailed and Why Licenses Are Suspended or Revoked Quizzers' Column (Labor Contracts

and Compensation Insurance) \_\_\_\_ 11

However, licensees should very carefully prepare this renewal application. While no arbitrary action is planned that will work against the licensee who makes an honest error in indicating his major line of work, if it later develops that he actually made a misrepresentation of fact the consequences might be severe. In such an in-

### THE CALIFORNIA LICENSED CONTRACTOR

### Department of Professional and Vocational Standards

CULBERT L	OLSON	Governor
DWIGHT W	, STEPHENSON	Director
FRED A. T.	AYLOR Assistant	Director

### Members and Officers, Contractors' State License Board

ROY M. BUTCHER, Chairman	San Jose
S. G. JOHNSON, Vice Chairman	Oakland
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WALTER TREPTE	
J. PHILIP MURPHY	San Francisco
FLOYD B. LANE	Los Angeles
JESS B. WORTHINGTON	San Diego

Allen Miller, Registrar and Executive Secretary Glen V. Slater, Assistant Registrar

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# New Procedure for Renewal Applications

(Continued from page 1)

stance the licensee could be charged by the Registrar with the violation of Sections 7112 and 7115 of the Business and Professions Code. Section 7112 prohibits "Misrepresentation \* \* \* in obtaining a license," and Section 7115 provides that a licensee may be suspended for "Failure in any material respect to comply with the provisions of this chapter \* \*."

The use of a specific form upon which the application for renewal of a license is made has recently been required by the Legislature. Applicants who feel that their license should be automatically renewed merely by the filing of the proper fee, should bear in mind the fact that for undoubtedly a good and sufficient reason the Registrar is required by the law itself to accept applications only if filed upon an application form "prescribed by the Board."

The Board referred to is, of course, the Contractors' License Board, of which body the Registrar is the executive secretary and administrative officer.

The problem of handling the renewal of thirty odd thousand licenses as the result of

applications which will be sent to the Registrar within a thirty-day period—and, in fact, most of them within a period of a week—will, as usual, cause a severe strain upon the administrative operations of the Contractors' State License Board this year. However, as in the past, every possible step will be taken to permit the department to handle, with all possible speed, properly completed renewal applications and fees which are filed in the proper manner and at the proper time.

Those who do carefully read their renewal instructions and file their renewals in accordance with those instructions will not be penalized by a delay in receiving their renewal licenses because others have neglected to carefully attend to their own renewal applications. Consequently it will again be the policy of the Registrar to set aside renewal applications which are out of order, and to take the necessary step to clear them up as soon as possible. But the right of way will be given to renewal applications which are strictly in order.

If licensees have any questions in regard to their business, such as the possible necessity of a new license because of impending changes, these questions should be settled at once. Applications for new licenses should be applied for at the earliest possible moment if the new license is desired to be effective on July first. The great press of work that comes at the close of June will necessarily slow down the issuance of original licenses.

On June 29th and 30th, postal delivery men will call at our office in Sacramento dragging behind them a string of baskets of incoming mail. Over forty thousand pieces of correspondence, our past experiences indicate, will deluge our offices about June 30th. One girl will be unable to open envelopes (by machine) and pin checks onto applications as fast as the mail arrives. A minimum of two other girls will do nothing but sort the opened letters into three groups. After that comes the more complex work of recording and identifying the fees, preparing deposit records that can be checked back in case of a claimed loss, throwing out irregular applications, setting aside letters for later answering because questions of a thousand varieties are hoarded by licensees until renewal period arrives.

Licensees who have any questions because of peculiar conditions pertaining to their own affairs, and who feel that they de-

(Continued on page 13)

# Governor Olson Appoints New Board Members



J. PHILIP MURPHY ENGINEERING CONTRACTOR



FLOYD B. LAYNE GENERAL CONTRACTOR



JESS B. WORTHINGTON
PAINTING CONTRACTOR

J. Philip Murphy, Floyd B. Layne and Jess B. Worthington have been appointed by Governor Culbert L. Olson to fill vacancies existing on the Contractors' State License Board due to the expiration of the terms of Clarence B. Eaton, Hugh W. McNulty, and Stephen L. Ford. Murphy fills the vacancy open to engineering contractors; Layne comes from the general building contracting field; and Worthington is a specialty contractor.

J. Philip Murphy, while but thirty-one years of age, is one of the largest engineering contractors in the Pacific Coast area, specializing in steel and reinforcing rod work. He is a graduate of St. Mary's College, with a structural engineer's degree. Following his graduation in 1929, Mr. Murphy worked for the McGrath Steel Company, and after five years started in business for himself. He has rapidly forged his way to an outstanding position in the construction world.

His family consists of his wife and three children. Murphy is the son of Daniel P. Murphy, Sheriff of the City and County of San Francisco, and a nationally known labor leader.

Some of the contracts handled by Board Member Murphy have included the San Francisco Golden Gate Bridge approach, the Hansen Dam at Los Angeles, as well as other outstanding California jobs. At the present time he is working on the United States Ammunition Depot at Hawthorne, Nevada, and is about to start on the steel contract on the Mud Mountain Dam in Washington.

Floyd B. Layne has been active in residential and commercial contracting in Los Angeles for eighteen years, and has been licensed under the Contractors' Act since the inception of that law in 1929.

He is married and his family is blessed with two children, both boys, one of which just recently started in the contracting business.

Layne has been an active man in construction organizations as well as in civic and religious groups, for a number of years. He is a member of the Masonic Order and Al Malaikah Shrine of Los Angeles. For some time he served on the Board of Directors of the Congregational Church in Los Angeles, which he attends.

construction organization started as an active member in the Builders' Exchange of Los Angeles while that organization was operative there. In 1934 and 1935 he belonged to the Southern California Chapter of the Associated General Contractors, and then threw his support with the Building Contractors of California, a group embodying contractors generally engaged in residential work. As an organizer of that association, he was necessarily very active and served as president for one year, director for seven years, and is now treasurer of the State organization. He is also on the Executive Committee of the Construction Industries Committee of the Los Angeles Chamber of Commerce.

Mr. Layne has been closely associated and familiar with the work of the Department for a number of years, having been active in legislative work, even prior to the amendment of the Contractors' Act to provide for direction of the policies of the Department by a Board.

The son of a doctor, Layne was born in Texas. He attended the Colorado School of Mines, following which he joined the Engineering Department of the Southern Pacific Railroad.

Jess B. Worthington of San Diego, and who also maintains a business office in San Francisco, is one of California's leading painting contractors. He has, in fact, fre-(Continued on page 13)

# Suspensions and Revocations

From February 1, 1940, to March 31, 1940

CORRECTION: The February, 1940, issue of this publication made an unfortunate error in listing that the license of the Pioneer Builders had been suspended. The license of that firm was never legally suspended and we regret this error.

A-1 PLASTERING & CEMENT CO., Los Angeles, lic. no. 38815, plastering—suspended for 90 days and until restitution.

ABERNATHY, F. T., ABERNATHY, R. L., AND ABERNATHY, R. F., Inglewood, lic. no. 61071, general building—suspended for 60 days.

ANDERSON, HERMAN, San Bernardino, lic. no. 44795, general building—suspended for 60 days with reinstatement if errors rectified.

ARAIZA, J. F., San Diego, lic. no. 22943, cement and concrete—suspended for 90 days.

AVERY, C. L., Colton, lic. no. 50003, general building—indefinite suspension.

BALDWIN COMPANY, North Hollywood, lic. no. 22939, plumbing—revoked.

BERTRAM, M. C., Los Angeles, lic. no. 57025, general building—suspended until full restitution is made.

BILLEK, FRANK, La Honda, lic. no. 43137, general building—suspended pending further order.

BISWELL, ROSS, Monrovia, lic. no. 48625, general building—suspended until reimbursement and for 3 months.

BOWEN AND THIRKILL. Los Angeles. lic. no. 54528. building—suspended until reimbursement and for 3 months.

BOWEN AND THIRKILL, Los Angeles, lic. no. 54528, plumbing—suspended pending further order.

BOWMAN, JOHN, Los Angeles, lic. no. 52422, general building—revoked.

BROWN AND HAMPTON, Oakland, lic. no. 64605, general building—suspended indefinitely.

CAMPBELL, ARCHIE, Los Angeles, lic. no. 55141, general building—suspended pending restitution and for 90 days.

CAPITAL CONSTRUCTION COMPANY, North Sacramento, lic. no. 54245, general building—indefiand for 90 days.

CAPITAL CONSTRUCTION COMPANY, North Sacramento, lic. no. 54245, general building—indefinite suspension for failure to answer.

CHRISTENBERRY, N. A., Glendale, lic. no. 60913 plastering—indefinite suspension.

CHURCH. ALBERT T., Vista, lic. no. 46803, general building—revoked.

DAVIES, W. A. & SON, Hollywood, lic. no. 8771, general building—suspended pending further order.

DAY, RAY D., Glendale, lic. no. 19755, plastering—revoked.

ECONOMY DECORATING CO., Los Angeles, lic. no. 56597, general building—suspended for 30 days.

ELLIOTT BROTHERS, Los Angeles, lic. no. 55164, floor—revoked.

ELLIOTT BROTHERS, Los Angeles, lic. no. 55164, floor—revoked.

GAMBLE, JIM, Los Angeles, lic. no. 57901, general building—revoked.

GENERAL IMPROVEMENT CO., Santa Ana, lic. no. 61450, general building—suspended until restitution.

GIBSON, GEORGE E., Los Angeles, lic. no. 46796, plumbing—suspended pending further order.

GILCHRIST & HATCH, Long Beach, lic. no. 7483, cement and concrete—suspended until restitution.

GOMEZ, FRANK, San Diego, lic. no. 22636, plastering—suspended pending further order.

GREGOLI, C. J., Los Angeles, lic. no. 37545, plastering—revoked.

HALLETT, GEORGE, Frazier Park, lic. no. 59330,

ing—revoked.

HALLETT, GEORGE, Frazier Park, lic. no. 59330, lathing—indefinite suspension.

HANSEN, HENRY, Glendale, lic. no. 43072, general building—indefinite suspension.

HUDDY, EDWARD F., Los Angeles, lic. no. 60927, masonry—brick, etc.—indefinite suspension.

IRBY, EARL T., Shafter, lic. no. 61681, general building—suspended pending further order.

JACOBSON, LEONARD J., Los Angeles, lic. no. 31681, general building—suspended for one year, eleven months suspended pending civil action.

JOHNSON, W. B. & SONS, San Diego, lic. no. 44604, general building—suspended for 30 days.

JOHNSTON, JAY R., Oakland, lic. no. 41229, general building—indefinite suspension for failure to answer.

answer.

KALBEN, MAX, San Diego, lic. no. 7931, plumbing—suspended for 60 days.

KHLOR, KENNETH H., Glendale. lic. no. 42723, general building—suspended for 60 days.

LARSON PLASTERING. PAINTING, Los Angeles, lic. no. 63836, plastering—indefinite suspension for failure to answer.

LOGSDON, BUN A., Inglewood, lic. no. 6015, general building—suspended for 60 days.

LOHMAN, THEODORE H., San Diego, lic. no. 30149, general building—suspended for 90 days.

LYON, OSCAR F., Berkeley, lic. no. 11419, general building—indefinite suspension for failure to answer.

MACK, HARRY, Los Angeles, lic. no. 58494, painting and decorating—suspended for 6 months with 5 months suspended.

and decorating—suspended for a months when a months suspended.

MAXWELL, C. C., JR., North Hollywood, lic. no. 65822, plumbing—revoked.

MAYES, L. A., Long Beach, lic. no. 32860, general building—suspended for 30 days.

MCNEESE, FRED T., Los Angeles, lic. no. 51379, general building—suspended until restitution and for a period of 3 months.

MERAZ CONSTRUCTION CO., Los Angeles, lic. no. 8674, general building—suspended—reinstated pending hearing.

MERRELL, W. M., North Hollywood, lic. no. 50717, speculative builders—suspended until restitution.

MILLER, CHAS. A., Los Angeles, lic. no. 66954, painting and decorating—suspended for 120 days, 60 days of which is suspended.

NEWBY, H. R., San Diego, lic. no. 52470, painting and decorating—suspended for 30 days.

NEWELL, WILFRED L., San Bernarding, lic. no.

NEWBY, H. R., San Diego, Inc. no. 52470, painting and decorating—suspended for 30 days.

NEWELL, WILFRED L., San Bernardino, lic. no. 62306, painting and decorating—revoked.

NOSS, H. G., JR., Fair Oaks, lic. no. 60753, general building—suspended for 30 days.

OLSON, L. S., Hawthorne, lic. no. 38403, general building—revoked.

ing—revoked.

PACIFIC PERMA-CRETE COMPANY, Hollywood, lic. no. 61394, waterproofing, damproofing—indefinite suspension.

PAYNE, EARL A., Oakland, lic. no. 31123, roofing—suspended until restitution made to complainant.

PERASSO, JOSEPH, San Francisco, lic. no. 28958, general building—indefinite suspension for failure to answer.

PRICE, J. M.. San Bernardino, lic. no. 48679, general building—suspended until restitution and for 60 days.

building—suspended which for days.

RENAKER, C. R., Los Angeles, lic. no. 62617, general building—suspended until restitution is made.

REYNOLDS, C. B., Beverly Hills, lic. no. 65820, general building—indefinite suspension.

RICKMAN, H. W., Oakland, lic. no. 49489, painting and decorating—indefinite suspension for failure to answer.

and decorating—indefinite suspension for failure to answer.

ROBERTS, EDWARD S., Long Beach, lic. no. 61432, general building—suspended pending further order. RONNE, RICHARD, Grass Valley, lic. no. 59155, general building—suspended for 270 days and until restitution is made.

SAFEWAY ROOFING CO., Oakland, lic. no. 58608, roofing—suspended for 30 days.

SAN FERNANDO VALLEY PAVERS, San Fernando, lic. no. 55997, hauling and trucking—suspended for 180 days, 150 of which are suspended with provisions.

SETSER ROOFING CO., Redding, lic. no. 64795, general building—indefinite suspension for failure to

answer.

SHAFER, M. "TED"., Los Angeles, lic. no. 56616, tile and tiling—indefinite suspension.

SILVA, ARTHUR, Point Loma, lic. no. 63504, painting and decorating—revoked.

SPRAGUE, JOHN E., Oakland, lic. no. 65154, general building—suspended pending restitution plus 60 days.

days.

STEWART, BUDD A., Oakland, lic. no. 44159, general building—suspended for 60 days and further until restitution made.

STURDY, T. R., Long Beach, lic. no. 51948, engineering—suspended for 6 months.

TRAYLOR, J. R. C., Oakland, lic. no. 57872, general building—suspended until restitution and for 30 days thereafter.

building—suspended until restitution and for 30 days thereafter.

VAN UNEN, J. W., San Bernardino, lic. no. 43038, plastering—indefinite suspension.

WANEK, A. C., Long Beach, lic. no. 61403, plumbing—suspended for 30 days.

WHITE, BEN, Compton, lic. no. 53394, general building—indefinite suspension.

WIGGINS, L. L., Los Angeles, lic. no. 39669, cement and concrete—suspended—reinstated pending hearing. and o

hearing.
WISER, GORDON J., Berkeley, lic. no. 41335, general
building—suspended until restitution.
ZITTEL, FRANK C., Grass Valley, lic. no. 53048, general building—suspended pending future hearing.

# Heavy Sentences and Fines Given Unlicensed Contractors

Riverside County is richer by \$300. The installation of six glazing jobs by an unlicensed contractor at a winter resort resulted in a fine of \$50 for each job.

Six months in jail, plus six months on probation during which time the defendant must pay \$10 per month to an injured owner, plus an additional six months on probation was the sentence given a San Bernardino County contractor who entered into an oral contract to reroof a dwelling for \$150. The contractor was paid in full, but failed to pay a material bill of \$107, resulting in the filing of a mechanics lien. The defendant used the money from the job to purchase a car.

Pleading not guilty before a Sacramento judge was of no avail to an unlicensed flooring contractor. After a lengthy trial, the defendant was found guilty and fined \$100 for having undertaken a \$130 contract for a Sacramento home owner. The defendant in this matter has long been a source of trouble to the Board as his operations were always subterfuged around the exemption clause of the law.

Ten days in jail, a \$50 fine, with six months' probation and the loss of a contract was the result of an unlicensed Belmont contractor's submission of a \$175 bid to wreck a school building for the city of San Mateo. The defendant was apprehended on the first day of the job and appeared voluntarily in court and plead guilty on the same day.

A licensed contractor loaned the use of his office and desk to his brother, who also acted as his foreman, from time to time. But the brother also borrowed the contractor's license and took a job for himself. A fine of \$100 followed this violation, which occurred in Orange County. In the same district, a \$50 fine was paid by an unlicensed painting contractor who secured a subcontract for \$210 on a new residence.

An unsympathetic judge in Santa Cruz found an unlicensed Boulder Creek brick mason guilty for contracting to construct a fireplace for \$115. The sentence of the Court was a fine of \$75 and probation for two years.

One San Francisco Municipal Judge fined a defendant contractor \$100 on two counts for contracting without the benefit of a license.

In Montebello township just east of Los Angeles a general contractor gave a \$385 subcontract to two unlicensed plumbing con-

tractors. The subcontractors not only were unlicensed but failed to pay the material bill of \$32.80, although they were paid in full. The two unlicensed men met with the judge informally and he delayed action in order to allow them to take care of the lien resulting from the unpaid bill. Each of the men contended that the other was the contractor. Finally one man having paid the material bill, but the other having given him no help, the judge passed sentence on the party who had not assisted in the payment of the bill, finding him guilty of being a contractor without a license. The sentence was a fine of \$100, but the court suspended half of it.

A licensed contractor associating himself with his brother-in-law as a partner for the construction of an auto court in Redding with-out first having secured a partnership license found both parties being hailed before the Redding Justice's Court as codefendants to answer the charge of contracting without a license. A fine of \$50 and probation for one year was imposed upon each defendant. In a civil court action covering the same job, a judgment was awarded the owners in the amount of \$625, which was the amount by which the contract price was exceeded.

\$25 fine and six months' probation was the result of an Oakland contractor's failure to secure a contractor's license. The defendant maintained that he was working on a "day work basis," but an Inspector produced the written and signed contract under which the work was being performed.

On a remodeling job in Sacramento under a contract for \$525 by an unlicensed contractor, liens were placed on the property in the amount of \$316. The contractor was charged before the Sacramento Police Court with failing to have a license, and a \$100 fine and thirty days in the county jail was imposed. The jail sentence was suspended, however. The Board's inspector who filed the complaint found it necessary to secure all of his evidence to present to the court through an interpreter as the defendant contractor was a foreigner, speaking no English, while the contract introduced was also written in a foreign language.

A guilty plea to contracting plumbing work on a school job without a license resulted in a cash fine of \$50 and a ninety day jail term for a Selma contractor. In Los Angeles a contractor with a long record of difficulties with this department continued to contract after revocation of his license. In fact he undertook a remodeling job for over a thousand dollars. He is serving ninety days in the city jail.

One enterprising but unlicensed plastering contractor from a county near San Francisco had a local Justice of the Peace impress upon him the necessity of securing a contractor's license. His Honor fined the misguided gentleman \$25 or two days in jail for each unpaid dollar of fine.

From Los Angeles to Bakersfield meant a long confined stay in the latter city for an unlicensed contractor when he was sentenced to thirty days in jail for having been found guilty of contracting without a license after a lengthy jury trial in the Justice's Court in Kern County. The job for which he was arrested was for the construction of an adobe house and the liens attached to the property as a result of his unscrupulous operations amounted to \$1600. As a result of this, the owner lost his property. The original contract that existed was in the amount of \$2800.

A bench warrant has been issued, also in San Diego, after an unlicensed contractor failed to comply with probationary conditions imposed by the court. He was convicted of contracting without a license, and it was shown to the court he had caused a substantial loss to the owners of the property where he worked. The court suspended a sentence of six months in jail, plus a fine of five hundred dollars, and in return for the suspended sentence, the "contractor" agreed to repay the owners at the rate of twenty-five dollars monthly. Months followed, but no payments were made, and the probationer disappeared. Upon apprehension he faces the full six months and five hundred dollar fine.

Failure of a San Francisco contractor to renew his license for the fiscal year 1939-1940 before contracting electrical wiring jobs proved to be a very humiliating and expensive oversight. Counsel for the contractor, after reading the complaint, advised the defendant to enter a plea of guilty as charged. The court assessed a fine of \$50 or five days in jail. The contractor paid the fine in cash.

An unlicensed party in San Diego, released recently following a sixty-day sentence for posing as a contractor, faces a new charge, and two of his alleged confederates are sought on warrants resulting from felony charges. The "contractor" advertised a building service, and following answers to his adds, the alleged "architect" and "financial expert" of the leader solicited and secured deposits upon new homes that were not built.

Failure to renew his license caused a Modesto contractor to suffer a \$50 fine or twenty-five days in the county jail for a job undertaken by him for a general contractor in the amount of \$700. He chose to pay the fine,

A contractor not in possession of a license issued by the State Contractors' License Board assumed to contract a job for \$285 in Fort Bragg. A Justice of the Peace found the defendant guilty and fined him \$25.

In an eastern section of San Bernardino County a \$100 fine was reduced to \$25 when a plea for probation was made by an unlicensed contractor who entered into an oral agreement to perform carpentry labor for the sum of \$464 on one job and for \$360 upon a second.

Out and injured was an unlicensed Grass Valley contractor who undertook the construction of a home for \$3500. He was arrested, found guilty and fined \$25. The owner invoked the provision of the License Law, which defeated his collecting for materials and services rendered on the job.

Pasadena's police court judge assessed a \$100 cash fine with an alternative of fifty days in jail when the subcontractor was shown by trial to have entered into a painting subcontract for \$408 without a State license. This defendant told the court that he had an arrangement with a licensed contractor for the "loan" of the license and he, therefore, believed he was legally protected. The case was continued at the request of the city prosecutor in order that our inspector might bring in the contractor whose license was supposed to be loaned. He testified that no loan was discussed but that the unlicensed man had told him he had his own license.

A father and son in Daly City, doing alteration work, claimed they did not know it was necessary to have a contractor's license to do labor contracting. They voluntarily appeared before the Judge and plead guilty. The Judge impressed upon them the necessity of securing a license within thirty days by suspending a \$500 fine and six months in jail each.

A \$50 cash fine and probation for six months was meted out to an unlicensed plastering contractor of Redding by the local

(Continued on page 15)

# Why Licenses Are Suspended Or Revoked

Editor's Note: This is the second of a series of fifteen articles to be run in a like number of issues of the California Licensed Contractor. Each will be preceded by a brief statement of all of the sections of the Business and Professions Code that constitute cause for action against a contractor's license. In each of the articles one of the sections will be featured by an explanation and by examples taken from our files. The sections are Nos. 7106 to 7120 inclusive, and are groupted in Article 7 of Chapter 9 of Division III of Business and Professions Code of California.

Power of suspension for violation of these sections is given the Registrar in Section 7090 of the same article, which states, "The registrar may upon his own motion and shall upon the verified complaint in writing of any person, investigate the actions of any contractor within the State and may temporarily suspend or permanently revoke any license if the holder, while a licensee or applicant hereunder, is guilty of or commits any one or more of the acts or omissions constituting causes for disciplinary action."

Consolida-

The suspension or revocation of license as in this chapter provided may also be embraced in any action otherwise proper in any court involving the licensee's performance of his legal obligation as a contractor.

Abandon-

7107. Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action.

Misuse of

7108. Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or any construction completion ofproject or operation, and their application or use for any other construction project or operation, obligation or purpose constitutes a cause for disciplinary action.

Disregard of specifica-

7109.Wilful departure from or disregard of, plans or specifications in any material respect, and prejudicial to another without consent of the owner or his duly authorized representative, and without the consent of the person entitled to have the particular construction project or operation completed in accordance with such plans and specifications constitutes a cause for disciplinary action

Violation

7110.Wilful or deliberate disregard and violation of the building laws of the State, or of any political subdivision thereof or of the safety laws or labor laws or compensation insurance laws of the State constitutes a cause for disciplinary action.

Preservation of records.

7111. Failure to make and keep records showing all contracts, documents, records, receipts and disbursements by a licensee of all of his transactions as a contractor and open to inspection by the registrar for a period of not less than three years after completion of any construction project or operation to which the records refer constitutes a cause for disciplinary action.

7112. Misrepresentation of a ma-Misrepresentation.

terial fact by an applicant in obtaining a license constitutes a cause for

disciplinary action.

Violation of

7113. Failure in a material respect on the part of a licensee to complete any construction project or operation for the price stated in the contract for such construction project or operation or in any modification of such contract constitutes a cause for disciplinary action.

Unlicensed

7114. Aiding or abetting an unlicensed person to evade the provisions of this chapter or knowingly combining or conspiring with an unlicensed person, or allowing one's license to be used by an unlicensed person, or acting as agent or partner or associate, or otherwise, of an unlicensed person with the intent to evade the provisions of this chapter constitutes a cause for disciplinary action.

Violation of this law

7115. Failure in any material respect to comply with the provisions of this chapter constitutes a cause for disciplinary action.

Fraud.

7116. The doing of any wilful or fraudulent act by the licensee as a contractor in consequence of which another is substantially injured constitutes a cause for disciplinary action.

Personnel

7117. Acting in the capacity of a contractor under any license issued hereunder except: (a) in the name of the licensee as set forth upon the license, or (b) in accordance with the personnel of the licensee as set forth in the application for such license, or as later changed as provided in this chapter, constitutes a cause for disciplinary action.

7118. Knowingly entering into a contract with a contractor while such contractor is not licensed as provided in this chapter constitutes a cause for disciplinary action.

Lack of reasonable diligence.

7119. Wilful failure or refusal without legal excuse on the part of a licensee as a contractor to prosecute a construction project or operation with reasonable diligence causing material injury to another constitutes a cause for disciplinary action.

Withholding money.

7120. Wilful or deliberate failure by any licensee or agent or officer thereof, to pay any moneys, when due for any materials or services rendered in connection with his operations as a contractor, when he has the capacity to pay or when he has received sufficient funds therefor as payment for the particular construction work, project, or operation for which the services or materials were rendered or purchased constitutes a cause for disciplinary action, as does the false denial of any such amount due or the validity of the claim thereof with intent to secure for himself, his employer, or other person, any discount upon such indebtedness or with intent to hinder, delay, or defraud the person to whom such indebtedness is due.

This article deals with the second cause for disciplinary action, and is necessarily much too brief to more than touch a very few of the high spots involved under this section, which covers generally all phases of rescission and abandonment of legal contracts. The section is numbered 7107 of the Business and Professions Code, and reads as follows:

"Abandonment without legal excuse of any construction project or operation engaged in or undertaken by the licensee as a contractor constitutes a cause for disciplinary action."

"Abandonment" is the relinquishment of a known right with the intention to abandon, and the objective act by which such intention is carried into effect. Abandonment is a question of fact to be determined from the facts and circumstances in each case. Webster has defined "abandonment" as follows: "To relinquish, or give up with the intent of never again resuming or claiming one's rights." Under this section of the Code, abandonment is limited to the failure to do physical construction work which the contractor by his contract, oral or written, has legally obligated himself to do.

Abandonment of a construction project may occur:

(1) By failure on the part of a contractor to commence work agreed or contracted to be done.

(2) By failure to complete work commenced according to the agreement or contract.

We find under the first proposition "Abandonment before work has commenced," that it occurs most often in contracts between subcontractors and general contractors. frequently arises from a subcontractor's failure to submit a bid with a proper time limit for acceptance or rejection by the general contractor. That is, the subcontractor gives a bid without a time limit for acceptance or rejection, which is not acted upon for some time because the general contractor has submitted it as a part of his figures on a large project, or is using it as a basis to drive the price down on other subcontractors. The bid or offer thus made usually needs only notice of acceptance to give rise to a binding contract if done within a reasonable time, where no time is specified in the offer. And the failure of a subcontractor to proceed with the work as provided by the contract, oral or written, is cause for complaint "for abandonment" to issue under the Code.

This, of course, does not mean that the defendant can not free himself of the accusation, but it puts upon him the burden of proving that his failure to commence the project is legally excusable. In his defense the defendant may show, among other things:

(1) That the time elapsing before acceptance of his bid or offer was unreasonably long under the circumstances and hence no contract existed.

(2) That the bid or offer was not accepted according to its terms.

(3) That the price was so low that the acceptor was put upon notice that there had been a mistake on the part of the bidder. (A low bidder, however, will not be relieved of a mistake caused by his own carelessness or inattention to details.)

(4) Fraud and impossibility.

(5) That the contract violates public policy or building regulations.

We mention here only the two examples between general contractors and subcontractors because of lack of space. There are, of course, many cases where an owner complains against a licensee, for abandonment before work has commenced. However, as a practical matter, most cases arising between contractors and owners for abandonment before work has commenced are for money damages in a specific sum, and therefore civil action before the State Courts is the primary remedy. Licensees should remember that in

all cases brought before the courts arising out of building contracts, the court is empowered to order suspension of the contractor's license if it is determined by the court that he has failed to discharge his duties as a contractor.

An interesting case of abandonment of contract recently arose where a subcontractor was made the defendant in an action filed by a general contractor. The general contractor charged he had been given a bid from the subcontractor, who was low, and that he notified the subcontractor within a reasonable length of time that the job was his. The subcontractor refused to proceed with the work, however, and the general contractor claimed that he was injured to the extent of the difference between the two lowest bids.

As a matter of fact, the subcontractor was not notified that his bid was accepted within a reasonable time. Notification was made at a date later than is customary in the business. After the bids were all in, and the general contractor had been awarded the contract, he went to subcontractors who had not previously bid on this particular work and attempted to get them to take the job at a figure below that submitted to him by the original subcontractor.

The general contractor spent several weeks "shopping" around for lower bids before he called this subcontractor and told him that it was his job. The subcontractor had learned that the bids were being peddled, and he proved this to be the case at the hearing. Immediately upon learning of the peddling he had bid upon and secured a considerable volume of other work and therefore was not in a position to proceed with the work of the complaining general contractor. The Registrar agreed that he was perfectly justified in his position, and therefore dismissed the complaint.

It sometimes happens that a general concomplains of a subcontractor's abandonment when the subcontractor refuses to take a contract for which he has submitted a bid because the price is too low but which has been accepted by the general contractor before the mistake becomes known to the subcontractor. In these cases where it is obvious that the low bidding subcontractor has made a mistake in his calculation, this office checks to ascertain whether the mistake is due to carelessness, or inattention to detail on the part of the bidder, or whether it is an excusable and innocent error which should not work to the subcontractor's disadvantage. Ordinarily, where a bid is decidedly out of line, the general contractor is bound to call it to the attention of the subcontractor and

permit him to correct an excusable error or withdraw his bid. If the subcontractor has not been given the opportunity to alter his bid or to withdraw it and we find the mistake was excusably made, the Registrar does not approve of the filing of charges against the licensee.

Under the second proposition, namely: "Failure to complete work commenced according to agreement or contract," there are nearly as many reasons for complaints issuing under this provision of the Code as there are different contracts.

Frequently, complaints brought against contractors "for abandonment because of their failure to complete contracts after commencing work" arise because of difficulties involving "extras." Therefore, we think the following will be of interest, for it is based upon a recent decision of the California Appellate Court.

In that case a complaint was filed against a contractor who had entered into a written contract for the erection of a dwelling and garage. Progress payments were to be made under terms of the agreement. After the contractor had commenced work the owner requested some extras for which he agreed to pay. The original contract was written, the agreement for the "extras" was oral. The contractor, after furnishing the extras. demanded payment according to the oral agreement for his work and materials for the extras. The owner refused to make the payment and the contractor ceased his operations as a contractor and refused to complete the building. The owner then filed a complaint with the Registrar under section 7107, Business and Professions Code.

Conceding that the owners breached their part of the agreement by failing to pay for the extras, it is a well settled principle of contract law that a contractor is not justified in abandoning a contract for an alleged breach of that contract when the breach does not go to the root of the consideration. In this case the breach of the oral agreement for "extras" was an independent agreement that did not go to the whole consideration of the written contract for the erection of the dwelling and garage, but was subordinate and incidental to its main purpose.

It did not constitute a breach of the entire contract, and consequently, did not warrant an abandonment of the entire contract by the contractor although he was the injured party. The contractor was bound to perform his part of the contract, because a failure to perform a subsidiary act under a contract will not ordinarily justify an abandonment unless it is of such character as to clearly show an

intent on the part of the person in default to abandon the contract or to be no longer bound by its terms. In this case the owner finally paid the full original contract price and therefore did not show any intention on his part to abandon the written contract. A dispute existed in regard to performance of the extras.

The fulfillment of the terms of the written contract, without any reference to the oral agreement, would have provided a completely finished house and dwelling, as provided for in said written contract. The contractor, therefore, was not entitled to abandon both contracts and cease all work in connection with the construction of the dwelling. He was required to proceed with the work and complete the dwelling and garage.

The contractor, of course, has a right to collect for the "extras" but that he must do in civil action for damages.

We have had many cases where an owner has been required to take a rather responsible hand in the management of the job because of inability to get in touch with the general contractor when things were not going properly. In one such instance the contractor did quit the job because of this interference on the part of the owner. As a matter of fact, when the files on the case were closed it was clear that the contractor had no chance of coming out with a profit on the job; he had no funds with which to meet his obvious losses; and his real reason for abandoning the job was not interference by the owner, but lack of funds. He had actually stopped supervision before the owner stepped in, which justified the Registrar in suspending the license.

In another such case the contractor could not be reached by the owner at his home or office, and he even refused to accept registered mail. Telephone messages for return calls were never answered. When the complaint was filed in our Department the contractor's answer claimed that the "meddling" owner had been taking too free a hand with the job. Our preliminary investigation, before accepting the complaint, satisfied our inspector the complaint had merit, and after the evidence was all in, the owner was vindicated and the contractor was suspended for several months. As an additional requirement for reinstatement, a suspended contractor is frequently required to take care of the excess of the contract price which results when an owner employs another contractor to finish the job, but at a figure which exceeds the balance which was unpaid under the first contract.

It is possible for a contractor to have a legal excuse for the abandonment of contract because of interference by the owner with his workmen and subcontractors. Where such interference occurs, however, a contractor could not claim a good reason for abandonment if the owner was forced to take a hand in the job because of the failure of the contractor to see that the work proceeded in a proper manner. What constitutes procedure in a "proper manner" varies according to the facts in individual cases.

Many owners take the unreasonable viewpoint that they have the right to go directly to every journeyman and subcontractor on the job about every fancied grievance, and without first taking the matter up with the general contractor. If the general contractor can possibly be reached, the grievance should be taken to him. We are constantly telling complainants that we will take no hand because the trouble, fancied or otherwise, has not been reported to the general contractors. It is often hard to get some people to leave the job alone and do business with the "top" man. We recognize that failure to proceed in this manner is bound to cause confusion on the job, to lessen men's interest in doing a good job, and so advise the would-be complainant. Often in cases of this sort owners thereafter direct their antagonistic energies in our direction, which may be a relief to the workmen and subcontractors, but not to the Registrar's inspector chosen to act as an unofficial arbitrator.

In some instances, we have gone so far as to put an inspector on the job to check as the work proceeds. Where this has been the last and only resort, we have told the owner that either we check and approve the work or drop the case. The owner has been required to agree to accept our o.k. of the work, if given. In these rare cases, we have been able to cooperate very easily with the relieved contractor, but we seldom ended with much of a recommendation from the owner.

In summarizing abandonment of contract. it would seem to the best advantage of the licensees to be as specific as is possible under the circumstances in making their offers to contract, and in putting definite time limits within which the bid must either be accepted or rejected. Contractors at all times should give attention to details in making their offers. After having entered into a contract they should make sure that they have justification for abandoning the work without incurring a liability for their failure the contract. tocomplete Contractors should at all times consider their maximum

(Continued on page 12)

11

### QUIZZERS' COLUMN

Q. In order to protect myself, my subcontractors performing labor alone sign an agreement that they will not hold me responsible under the Compensation Insurance Law or under the State and Federal Laws relating to unemployment and Old Age Insurance. What further step, if any, should I take to keep myself in the clear?

A. You are not in the clear and you can not keep yourself in the clear by such agreements, if you are actually liable. No contract or agreement, either oral or written between yourself and an employee destroys his right to claim the benefits under the Compensation Insurance Act if such a right exists. Undoubtedly there are similar provisions in both the State and Federal Security Law. By the fact that you are taking steps to avoid responsibility, you are practically admitting that your labor contractors are actually employees, which is probably the case under the provisions of Section 200 of the Labor Code.

O. I work for a plaster contractor, applying lath upon piece work pay. He insists that I have a contractor's license so that he need not cover me with compensation insurance. Am I required to have such a license?

A. The fact that you hold a license does not excuse him from liability under the compensation insurance law. The plastering contractor is either subject to the act or not, depending on the actual relationship. Your license does not prove that you are an independent contractor when you are working for him. Probably in case of an injury the Industrial Accident Commission would hold that you are an employee and the burden of proof would be placed on him to prove otherwise. We doubt that you need a license, but wish more details before giving a final answer.

Q. Have the Courts ever determined whether or not shinglers employed by general contractors on a piece work basis are employees of the contractors or are independent contractors?

A. In individual cases involving employment of this sort, the Courts and the Industrial Accident Commission have held that the shinglers are employees of the general contractor, even where one shingler has taken a job and has reemployed another

shingler under him. In this type of case it has been held that a shingler employed by the first shingler is entitled to compensation insurance benefits from the general contractor.

Q. I have a subcontractor's license, and I have been taking all the carpenter work on small houses for a general contractor at so much per house. If I am injured is he responsible for my hospital costs, and will I be able to collect through the Industrial Accident Commission?

A. Probably. The relation is most likely that of employer and employee and not independent contractor. An independent contractor is ordinarily a person who renders services for:

(1) A specified recompense.

(2) A specified result.

(3) Under control of his hirer as to the results of his work only and not as to means by which such result is accomplished. By statute the compensation act presumes that unless a definite showing is made that one is an independent contractor, he is an employee.

Q. If I am required by my subcontract to give all or nearly all of my time to a particular job, does that affect my status as an independent contractor?

A. Yes. One of the controlling features is whether or not a workman must give all or nearly all of his time to a particular job, and where the contract requires exclusive personal services involving a series of personal acts, there is a very strong indication of employer and employee, rather than an independent contractor status.

Q. If the general contractor has the right to change the plans and specifications, does that make the subcontractor an employee?

A. The right reserved by the general contractor to make alterations in the plans does not necessarily change the relation between the parties, as the general contractor nearly always reserves the right to supervise or inspect work during its performance and make such changes as will be necessary in completing the contract according to the finished results desired.

Q. Is there a yard stick by which I, as a general contractor, could be guided with reasonable assurance that my subcontractors were independent contractors?

A. Yes. (1) See that you have nothing to do with respect to the work except to see that the contract is performed according to its terms, conditions and specifications.

(2) The subcontractor should have the independent use of his own skill, judgment, means and servants in the execution of the work. (3) The subcontractor should have exclusive control of the manner in which the work is to be done. (4) The subcontractor should retain full control of the work and workmen. (5) Leave execution of the work entirely to the subcontractor's own judgment, as to the means and assistance that he may think proper to employ upon the work. (6) Allow the subcontractor to procure labor and material in his own way, provided they are such as the contract demands, and to use such machinery and appliances as he deems proper, provided they do not necessarily injure the subject matter of the contract, or interfere with work done by others. (7) The subcontractor should be free to undertake such other work as he sees fit.

Q. I have been told that, because I pay my employees on piece work basis, they are independent contractors and I therefore am not required to carry compensation insurance to cover them?

A. Your information is probably wrong; the method of payment is not decisive of the relationship as an independent contractor; the payment of services is suggestive of employer-employee. Therefore you are taking grave chances of being held responsible unless you carry insurance to cover men furnishing labor on a piece work basis. Section 200 of the Labor Code reads: "Wages" includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

Q. If a contractor employs his son, or sons, who live with him, and has no other employees is he required to have compensation insurance?

A. Yes. The Compensation Insurance Law does not exclude relatives and insurance must be carried for their benefit as well as for others you may employ. Remember, the relatives' names must be included in the policy.

Q. Must members of a partnership insure themselves under the Compensation Insurance Law?

A. Yes. A working member of a partnership, regardless of occasional distribution of profits, is ordinarily considered a wage earner and employee if he draws a regular sum, or advance, or salary, and the co-

partnership must secure insurance to cover him.

Q. I am a licensed contractor. Another licensed contractor exchanges services with me. It is necessary to have compensation insurance?

A. Yes. An agreement between persons to exchange services, each to work for the other during certain specified times, although no wage or other remuneration is given for the services, constitutes a contract of employment, and the person who is receiving services is the employer during that time, and is liable for injuries.

Q. I employ a helper only a few days a month to help on parts of work that I can not do alone and pick up almost anyone for the purpose. Must I have compensation insurance to cover them?

A. Yes. Where the work done is usual and in the regular course of your business, it is not exempted as casual employment, merely because it is only performed once a week, day or other period. It is the nature of the service and not its duration that is important. It is not changed because new and different persons perform the services on each occasion.

Q. Does the discharge of my assistants by the general contractor affect my subcontract?

A. Yes. It shows rather clearly that you are yourself an employee only and acting as a supervisor under the general contractor. The right to employ, control and discharge workmen is one of the most conclusive tests to determine the relationship under a contract as to whether it is an independent contractor or employer-employee relationship. The power to terminate the employment at any time without liability is a strong circumstance tending to show the subserviency of the workman since it is contrary to full control of work necessary to the relationship of independent contractor.

Why Licenses Are Suspended Or Revoked
(Continued from page 10)

obligations under agreements and avoid haste in obligating themselves for the construction of projects that they can not with certainty expect to complete according to the terms and conditions of the agreement.

CONCITIONS Of the agreement.

The August "California Licensed Contractor" will have an article upon Section 7108 of the Business and Professions Code, "Diversion of funds or property received for prosecution or completion of a specific construction project or operation, or for a specified purpose in the prosecution or completion of any construction project or operation, and their application or use for any other construction project or operation, obligation or purpose constitutes a cause for disciplinary action."

### Governor Olson Appoints New Board Members

(Continued from page 3)

quently successfully bid upon larger projects in other portions of southwestern United States.

He has been a resident of California for seventeen years—for the past thirteen years of San Diego. His family consists of himself and wife, and in the absence of a larger family to absorb his spare energy, his associates report that he usually successfully bids on jobs in Idaho during the better part of the fishing and hunting season, which gives some indication of the nature of his hobbies.

Worthington has been an outstanding organization leader in painting circles in California and served as president in 1937 of the California Council of Master Painters and Decorators. He is also at present an associate member of the San Diego Chapter of the Associated General Contractors. He is a member of the B. P. O. E. and also of the San Diego Executive Club.

The extent of his work is indicated by the fact that he recently was the painting contractor on the San Diego Civic Center Building, the entire project having cost in excess of \$2,000,000. He had the painting on the San Diego Post Office. He went to Texas in 1936 to paint the Centennial job, and had forty different jobs on Treasure Island in San Francisco Bay last year.

This member of the Board is Secretary of and active in the management of the Gunseal Corporation, a newly organized group which is attracting considerable interest by its successful excursions into the field of concrete residential construction.

Worthington commenced at the bottom of the painting business and worked with tools himself for seven years before 1916, at which time he entered the contracting field. Four years after his start as a contractor he successfully bid upon and carried out the painting upon what was then the largest school

building west of the Mississippi.

These new members of the Board will be welcomed by Board Chairman Roy M. Butcher, and members S. G. Johnson, William Nies and Walter Trepte. They will find that the State Law requires them to hold four meetings a year but that the necessity for special meetings will take a larger measure of their time than the minimum requirements of the Act indicate. Members of the Board serve without salary, and their terms of office are for four years.

Messrs. Worthington, Layne and Murphy will also find that the Board "sublets" its problems for study to committees composed of three members. These committees conduct interim investigations and studies and file reports and recommendations with the Board at its regular meetings.

# New Procedure for Renewal Applications

(Continued from page 2)

sire advice from the department before applying for the renewal of their license, should at once get in touch with the nearest representative of the Registrar or should immediately write to the Sacramento Office.

If it is not possible to settle the problem to the satisfaction of the licensee until the latter part of June, you must bear in mind the fact that the Registrar has no power whatsoever to extend the delinquent date beyond June 30th. Therefore, if there is any question in your mind about renewal of your license, it is suggested that you file your renewal application and fee before June 30th, attaching a letter setting forth the particular circumstances. Our time clock stamp will be placed upon your renewal application and letter. This will protect you from payment of the delinquency fee that automatically becomes effective July 1st, and if the license can be renewed the renewal license will be issued as soon as the matters in the complaint have been cleared up to the satisfaction of yourself and the Sacramento Office.

Section 7137 of the Business and Professions Code states, "All licenses issued under the provisions of this chapter shall expire on June 30th of each year. Application for renewal of a current license at any time before June 30th of any year authorizes operation as a contractor by the licensee until the actual issuance of the renewal license for the ensuing fiscal year.'

This language clearly shows that a licensee, whose renewal application is properly filled out and filed with his fee on or before June 30th is legally protected in his contracting operations, even though the Registrar's office does not get his actual new license to him for some time. On the other hand, should he delay renewal until after June 30th, a different situation arises. Not only must a delinquent fee be paid, but he is not legally entitled to engage in construction work, even such as completion of existing jobs, until his renewal application and fee have been filed and his license actually written up and issued.

Under ordinary circumstances, renewal applications can be issued within a few days' time, but during July, due to the bulk of follow-up work remaining from the renewal rush, it is impossible to handle any type of business in the Registrar's Office without some delay occurring.

Thus a delinguent renewal application which is filed on July 2nd might be so delayed the license would not be issued until July 12th. Any work done by that contractor between the dates of July 1st and 12th would be performed illegally. The contractor would have no right to sue in court to collect the sums due him for performance of that work, and he would be committing a misdemeanor of contracting without a license. As a matter of fact, the contractor might be barred from a judgment for any of the money due him upon the particular contract, even though some of the work was performed before June 30th, or after July 12th. On the well established theory that it is not proper for the courts to accept a case where the complainant was engaged in performing an illegal act, the Contractors' Law was amended by the Legislature (at the suggestion of an able Superior Court Judge) to provide that "No person engaged in the business \* \* \* of a contractor, in the business \* may bring or maintain any action in any court of this State for the collection of compensation for the performance of any act or contract for which a license is required by this chapter without alleging and proving that he was a duly licensed contractor at all times during the performance of such act or contract."

The interesting and important point in the above section of the Code is that the plaintiff in an action to collect for services performed while acting as a contractor must, in addition to proving the debt, also both allege in his complaint and prove at the trial that he was a licensed contractor "at all times" during the performance of his work. Thus the contractor who started his job in June and finished it in August, would not be able to prove in court that he was licensed "at all times" during the performance of that job, as he was in fact unlicensed between July 1 and July 12. This shows the importance of filing a proper application for renewal before June 30.

While this provision of the Contractors' Act may seem harsh, it has been held by our California Appellate Court that the contractor must prove that he was properly

licensed in the absence of such a provision in the Contractors' Act. Therefore, the specific provisions of Section 7031 are actually only a warning to those who might otherwise be careless and endanger their civil rights, of the situation that would occur if there was no such section in the Contractors' Act.

In conclusion, licensees are urged to immediately read the instructions upon their renewal application. Then fill out the renewal application and mail it with a check, money order, or draft payable to the Registrar of Contractors at Sacramento, as shown upon the renewal application. A delay of one or two days may allow other matters to drive this important business from your mind and result in your failure to renew until you have actually reached the realm of difficulties.

Applications for renewal will be accepted by mail only at the main office of the Registrar in Sacramento, and if personally presented, at the branch offices in San Francisco and Los Angeles as well. Renewal applicants will not save time by personally filing their applications. You are urged to mail your application to Sacramento, as applications filed in Los Angeles or San Francisco are forwarded to Sacramento where the entire renewal operations are handled.

Our office forces will be increased by the use of as much temporary help as is possible for our experienced staff members to properly supervise. With unsupervised temporary employees, the danger of too many errors from inexperience arises. As in the past, we will cancel mid-season vacations for our office forces, and increase working hours as much as it is reasonably possible for our people to do accurate work. The Registrar and his entire personnel, individually and collectively, appreciate the splendid cooperation which the separate members of the industry have given each year in the past. The entire organization hopes that the delay and confusion incident to renewal work will be reduced to such a minimum that every licensee will actually feel that every member of the force has been doing his or her best to render the greatest possible service.

No attorney relies upon his memory in preparing a case or studying a legal problem. He goes to his books. Do you have a Hand-book for Licensed Contractors to consult in regard to administrative problems in your business?

# Heavy Sentences and Fines Given Unlicensed Contractors

(Continued from page 6)

Justice of the Peace when he undertook a contract in the amount of \$275. A guilty plea to the charge was entered by the contractor.

Twenty days in jail was chosen in lieu of a fine of \$100 when a plaster contractor was proved in Los Angeles municipal court to have performed a \$140 job without a license.

A Riverside County contractor dug down into his pocket and paid a \$50 fine in order to avoid fifty days in the county jail. He submitted a bid to the school board to place a concrete foundation under an old school and he was not licensed. His defense that he was working for wages did not stand up in the face of the evidence presented.

A Modesto contractor contracting a plastering job in Sonora resulted in his being fined \$25 for not having procured a contractor's license. The Sonora Justice of the Peace fined him \$25 and Mr. Unlicensed Contractor claimed that this fine resulted in his losing all profit on the job.

Judge Young of a Berkeley Justice Court fined a contractor \$25 or five days of free labor for the city for contracting a \$275 job without a license.

In Burbank a painting contractor took four subcontracts, each under \$100 for painting work upon new buildings, the aggregate contract price of which in each instance was over \$100, and he failed to have a license from the State. The court sent him to jail for fifteen days after finding that he had wrongfully represented that he was a licensed contractor.

Out of circulation for fifty days is a Fresno roofing contractor who did a job in the amount of \$288 in Kings County without a State license. The jail sentence was chosen in lieu of a \$100 cash fine. In addition, the court imposed a ninety day probation period to commence at the termination of the jail sentence.

Sadder but wiser is an unlicensed contractor hailing from Merced who undertook a painting and roofing job in Modesto in the amount of \$340. The Modesto Police Court fined the contractor \$25. Apprehension by the local inspector resulted in his being forced to leave the job and it was completed by a licensed contractor.

A "grading" contractor, unlicensed, was sent to jail in San Diego for ten days for taking a sixty-dollar contract as part of a larger project while unlicensed. His ten days will enable him to learn more about highway work—he is serving the time in a county road camp.

Under the rules of the License Board, as interpreted by the Registrar, only one course of action is open to employees of this Department in dealing with unlicensed contractors.

If the inspector, in whose district the unlicensed man is reported to be operating is advised of this man's activities, or if he suspects that the man is contracting without a license, he carefully investigates the circumstances. If he then believes a cause for action exists, he presents the evidence indicating the illegal act to the proper public prosecutor. Public prosecutors are either the district attorneys in the various counties or the prosecuting attorneys of the larger towns and cities.

The presentation of the evidence is accompanied by a request for the issuance of a criminal complaint. The public prosecutor is charged with the drawing of the complaint and the prosecution of the case if it comes to trial. He has the authority, however, to refuse to prosecute if, in his opinion, the case should not be taken to court.

If the case goes to court and the contractor is found guilty the judge may assess a penalty consisting of either a fine by imprisonment or a combination of the two to a maximum of \$500 and six months in jail. Frequently, a prosecutor is not satisfied that the evidence will support the charge or he may feel that the case is based on such a small incident that the contractor did not realize he was in violation of the law. In such cases the prosecutor frequently issues a citation directing the accused to appear before him. At the appearance, our inspector is privileged to be present. The prosecutor questions the unlicensed contractor determine more fully exactly what facts can be proved. In some instances the citation is merely used as a warning to the contractor, but in others it is practically in the nature of an investigation to either lay the ground work for an actual prosecution or to determine that the case can not be successfully prosecuted.

Over a period of years the average penalty imposed by the courts upon unlicensed contractors has increased in severity. It is a clearly evident fact from our records that in the districts where the courts are more lenient there are more violations of the Contractors' Act. The files also show that the operations

of unlicensed contractors are frequently accompanied by disregard of their obligations to the public, and to a much greater extent than is the case among licensed contractors.

At least fifty per cent of the complaints of unlicensed contractors which reach our office are also accompanied by reports showing that the man is in difficulties. Such cases are widely varied in nature. Financial losses are often claimed because the contractor, after securing payment too far in advance, has abandoned the job. Owners frequently report the unlicensed contractor as having been paid in full, after which liens are filed, causing the owner to pay in excess of the true contract price in order to protect the prop-Violations of labor, safety, and compensation insurance laws are very commonly practiced by such men. Improper workmanship and disregard of specifications, as well as disregard of building ordinances likewise accompany such complaints, our investigations

If similar complaints were received against fifty per cent of the contractors who annually renew their licenses, the situation can hardly be pictured, assuming that the difficulties were proportionately as bad as those we ordinarily find in checking the activities of an unlicensed contractor.

As is the case with every law enforcement body, the Contractors' Board relies heavily upon reports of violations from the public. Licensed contractors whose business is injured by the inroads of the outlaws and who wish to see the moral reputation of the Industry at a higher level by curbing the operations of the men who bring all the contractors into disrepute, may report unlicensed operators to any member of the staff of the Registrar.

As much detail as can be given in these reports should be sent forward since the party first learning of the condition may possess knowledge of facts which one of our investigators would be unable to learn except through a number of calls or contacts. Reports of this sort will be kept confidential but they should be signed so that we can report back to the party what action has been taken, or it may be necessary to call back for further information. We also like to report our results back to our informants. Anonymous reports will not be considered for we find that even among the reports made by parties whose identity is known to us, the information is often inaccurate and considerable time is frequently lost before we actually get on the trail of the actual instance.

Owners frequently take bids from contractors in order to get an estimate, and then decide that they can finance the project. But instead of employing a contractor who has given his time to determine the fair cost, the owner decides to save the contractor's profit by direct employment of workmen and subcontractors. The owner is, of course, subject to the provisions of the Workmen's Compensation Insurance Act and the Social Security Laws, but enforcement of these separate acts against the owner is outside of the province of the Contractors' Board. He is not required to be licensed unless his building project is for sale purposes.

The Registrar takes this opportunity to thank the many licentiates and others who have so greatly assisted by such reporting in the past. He hopes this request for assistance will not go unheeded by others who are interested in doing their part to build up the industry.

## Compliments vs. Criticism

Human nature, uncontrollable element in all business relations, personally accounts for the hostile attitude of owners whose complaints against contractors are rejected by the Registrar for lack of merit.

From such dissatisfied parties, unable to see the injustice they seek to impose upon the contractor, naturally come complaints that the State License Board, subservient to its licentiates, operates only to whitewash erring contractors.

Human nature also smothers with lassitude the good results in the minds of many contractors, owners and others who acknowledge by letter the services rendered them under the Contractors' Law. Oral expressions are, of course, commonly made to the staff of the Registrar but seldom find their way to his ears.

Pleasing, therefore, was the receipt of the following letter:

"Gentlemen:

"I was in your office \* \* \* to see you about a complaint on a building built by Mr. Doe.

"Mr. Roe, your inspector, was down here and checked over the building with Mr. Doe and myself.

"Mr. Doe admitted his mistake and made me a refund of \$1,000 to replace the defective parts. I wish to thank you very much for the service you gave me.

Yours very truly,"

# The Industry and the Registrar Draw Closer Together

As reported in the February California Licensed Contractor, the Registrar seeks closer cooperation with the individual members of the Construction Industry, and for that purpose instituted a series of meetings throughout the State.

The first meetings, already reported in the above issue, took place in San Bernardino, Riverside and San Diego. The meetings were under the direction of a local committee of contractors and construction officials appointed to represent all elements of the Industry. Invitations to the meetings were extended to all licensees as well as to representatives of all other interested trade or business groups.

Following the first group of meetings similar affairs have been held at Santa Barbara, San Luis Obispo, Ventura and Santa Ana. Meetings are now being arranged in Northern California.

The Santa Barbara meeting was held in an auditorium of the State Teachers' College. The committee was headed by Elmer H. Whittaker, Chairman, assisted by H. R. Graham, Peter Davidson, A. J. Roberts, Nels Oakeson, Daniel R. Wagner, O. N. Reynard, Arthur J. McAdams and H. E. Weyler.

The San Luis Obispo meeting was in charge of a committee composed of Theo. M. Maino, S. G. Truett, E. L. Fauset, J. F. Faulstick, O. J. Reiner, and H. J. Hatch, with Maino acting as chairman. The meeting was held in a lecture auditorium of the California Polytechnic School and drew a representative audience from all sections of the county, both north and south of the Cuesta Grade.

The Ventura meeting, which was held in the Civic Auditorium, was presided over by Harold R. Beck in the absence of H. Y. Carrico, chairman. The balance of the committee was composed of Martin Davidson, Sigurd Hansen, A. Schroeder, W. S. Yeakle, B. H. Maland, J. R. Henderson, L. R. Byers and Carl Froerer.

Following the Santa Barbara, San Luis Obispo and Ventura meetings the floor was thrown open for questions from the audience and the consensus of opinion was that both the licentiates and the representatives of the Department, including the Registrar himself, benefited by the exchange of views and information that resulted. Average attendance was over 200.

The Santa Ana meeting was held in the auditorium of the Willard Junior High School

with A. L. Foster as chairman of the committee. Mr. Foster, the chairman, insisted upon his full committee, consisting of George C. Pickering, Gordon B. Findlay, M. L. Gilbert, C. R. Young, O. T. Moore, Harry B. Harper, Allison C. Honer, Donald Beach Kirby, and Walter F. Sorensen joining him on the stage. Representatives of the various communities were asked to show their strength by taking the floor, district by district. A number of public officials were also present. Over 400 attended the meeting.

Latest meeting held was in Oakland, limited to general contractors and representatives of subtrades and other organizations interested in construction matters. Over 500 East Bay men attended, with the committee in charge composed of George H. Sharp, J. T. Tulloch, William E. McGrath, D. N. Edwards, E. U. Roussell and Norman Ogilvie.

In so far as it is possible, the Registrar desires to have this series of meetings extend to all areas of the State and particularly to the areas in which the licentiates are not in close touch with the Sacramento, San Francisco or Los Angeles offices.

# Informal Complaints Heavy In February and March

From February 1, 1940, to March 1, 1940, the Inspectors of the Board satisfactorily settled 203 complaints and disputes, amounting to \$167,989.96.

These complaints and disputes were between contractors, or owners and contractors, and were handled "informally" due to circumstances presented in each case, which did not warrant any disciplinary action being taken by the board against any of the license holders involved.

Experience has shown that but a small percentage of jobs go along without a dispute of some description arising, especially in residential construction. Many owners are unreasonable in their demands and many contractors very stubborn. A small matter becomes an aggravated one and the board's inspector is sought to adjudicate the matter.

A complete investigation of the disputed matter is made by him and he then arranges a meeting with all of the persons involved which usually results in a satisfactory settlement. Oftentimes the contractor himself makes the suggestion that the inspector be sought, knowing that a fair and equitable adjudication of the matter will be made.